IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4552 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MEGHJI PETHRAJ KASHT NIVARAN DHAM

Versus

HARDEVSINH SATUBHA GOHIL

Appearance:

1. Special Civil Application No. 4552 of 1988

NOTICE SERVED for Petitioner No. 1

MR RJ OZA for Respondent No. 1

MR MK DAGLI, AGP for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 19/07/2002

ORAL JUDGEMENT

In this petition, which is filed under Article 227 of the Constitution, the petitioner claims that the provisions of the Payment of Gratuity Act, 1972 ("the

Act" for short) are not applicable to it and, therefore, order dated January 21, 1987, passed by the Controlling Authority under the Payment of Gratuity Act, 1972, Bhavnagar, in Application No. 90/86, directing the petitioner to pay a sum of Rs. 4,150/- to the respondent no.1, as confirmed by order dated May 24, 1988, passed by the Appellate Authority under the Payment of Gratuity Act, 1972, Rajkot, be set aside.

2. The father of the respondent no.1 was employed as a watchman in Shri Meghji Pethraj Leprosy Hospital since 1960. He died in harness on October 27, 1981. Therefore, the respondent no.1, who is his son, made an application to the Controlling Authority under the provisions of the Act, seeking direction against the petitioner to make payment of amount of gratuity due to his father. The case of the petitioner was that it was not covered by the provisions of the Act and, therefore, the application was liable to be dismissed. After hearing the parties, the Controlling Authority, vide an order dated January 21, 1987, concluded that the provisions of the Act were applicable to the petitioner and that the petitioner was liable to pay a sum of Rs. 4,150/- to the respondent no.1.

3. Feeling aggrieved by the said order, the petitioner preferred Gratuity Appeal No. 11/87 before the Appellate Authority constituted under the Act. The Appellate Authority has dismissed the appeal by an order dated May 24, 1988, giving rise to the present petition.

4. It may be stated that earlier the petitioner was represented through its Lawyer Shri H.K.Rathod, who was subsequently elevated as Judge of this Court. Thereafter notice was issued to the petitioner calling upon it to make necessary arrangement regarding its appearance through some authorised officer or Lawyer. Though notice is duly served, the petitioner has not made arrangement regarding its appearance through any authorised officer or a Lawyer.

5. Heard Mr. Manish K. Dagli, learned A.G.P. appearing for the respondent no.2. The Division Bench of this Court in Akbar Hussein Gulam Hussein & Anr. v. Appellate Authority for Payment of Gratuity, Ahmedabad & Anr., (1979) 20(1) GLR Page-1, has held that the words 'seasonal establishments' should be given wider meaning and persons working permanently in such establishments are permanent employees and entitled to the benefit of gratuity. In view of the decision of the Division Bench of this Court, it cannot be said that the view taken by

the Controlling Authority as confirmed by the Appellate Authority that the provisions of the Act are applicable to the petitioner, is erroneous in any manner. Further, the scope of the petition, which is filed under Article 227 of the Constitution, is well defined. In Mohd. Yunus v. Mohd. Mustaqim and others, AIR 1984 38, it is ruled that a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227. What is emphasised therein is that the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. For guidance of the Courts in the Country, it is laid down that in exercising the supervisory power under Art.227, the High Court does not act as an Appellate Court or Tribunal, and it will not review or re-weigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct errors of law in the decision. In view of the principles laid down in above quoted decision of the Supreme Court, I am of the opinion that no case is made out by the petitioner to interfere with the impugned orders, and the petition is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged with no order as to costs. Ad-interim relief granted earlier is hereby vacated.

(J.M.Panchal,J.)

(patel)